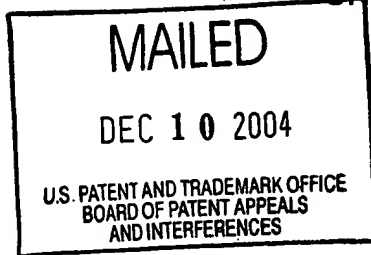


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 14



UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GARY T. KETCHUM

Appeal No. 2005-0015
Application No. 09/788,274

ON BRIEF

Before FRANKFORT, NASE and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-4, which are all of the claims pending in this application.

We AFFIRM.

BACKGROUND

The appellant's invention relates to a detector responsive to leakage of liquid from the urethra in urological investigations of the female bladder and urethra

(specification, page 1). Appellant's specification discloses two embodiments of the invention. In both embodiments, appellant's leak point wetness sensor utilizes only a single temperature sensor, said temperature sensor 28 being mounted to the instrument body at a location where it will be contacted by leaked fluid. In the first embodiment (Figure 4), a circuit 33 generates and provides a signal, usually a voltage, simulative of some lower temperature than would be expected from the liquid, such signal usually being proportional to ambient. The signal output from the temperature sensor 28 is compared with the signal from circuit 33 by comparator 32 to determine when leaked liquid has wetted the temperature sensor 28. In the second embodiment (Figure 5), the signal from temperature sensor 28 is provided to a rate of change detector 40 adapted to react to a quick rise in temperature, thereby indicating wetting of the temperature sensor by leaked liquid. A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The following rejection is before us for review.

Claims 1-4 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Ketchum¹.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the answer

¹ U.S. Pat. No. 5,862,804, issued January 26, 1999.

(Paper No. 12) for the examiner's complete reasoning in support of the rejection and to the brief (Paper No. 11) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art reference, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

We turn our attention first to the rejection of independent claim 1 as being anticipated by Ketchum. Ketchum discloses a leak point wetness sensor for urological investigations comprising a body 11 having a passage 12 therethrough to pass a catheter 13, a receptacle 21 formed in the body to receive liquid which leaks from the urethra past the inserted catheter, a thermistor 28 mounted to the inside of the passage 12 where it will be contacted by leaked liquid, a reference thermistor 25 bonded to the body where it will be exposed to ambient temperature, and a detector and amplifier circuit which detects a difference in the resistance of the thermistors and produces an output signal in response to the difference in the outputs of the two thermistors and provides a signal to output indicators 40 to indicate when the difference between the two thermistor outputs exceeds a predetermined number of degrees, thereby indicating a leak has occurred.

With respect to claim 1, the sole issue in dispute appears to be whether Ketchum discloses "a circuit adapted to generate and provide a reference output simulative of a selected temperature below that of an anticipated temperature of said leaked liquid."

We agree with the examiner that the circuit formed by the reference thermistor 25 and leads 35 therefrom fully responds to this limitation. Specifically, the resistance of the thermistor is related to ambient temperature, thereby causing the signal output from the circuit to be simulative² of a selected temperature (i.e., ambient temperature) below that of an anticipated temperature of the leaked liquid.³

We appreciate that appellant's disclosed invention differs from that of the Ketchum patent in that it utilizes only one temperature sensor and substitutes circuitry which is independent of ambient temperature. These features, however, are not recited in claim 1 and thus cannot be relied upon for patentability.⁴

² The term "simulate" is generally understood to mean "to give a false indication or appearance of; pretend; feign" or "to have or take on the external appearance of; look or act like." Webster's New World Dictionary, Third College Edition (Simon & Schuster, Inc. 1988).

³ Note that Ketchum discloses in column 2, lines 32-33, that the temperature of leakage fluid is higher than ambient.

⁴ It is well established that limitations not appearing in the claims cannot be relied upon for patentability. In re Self, 671 F.2d 1344, 1348, 213 USPQ 1, 5 (CCPA 1982) and that limitations are not to be read into the claims from the specification. In re Van Geuns, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993) citing In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

In light of the above, appellant's arguments do not persuade us of any error on the part of the examiner in concluding that the subject matter of claim 1 is anticipated⁵ by Ketchum. We thus sustain the rejection of claim 1, as well as claims 2 and 3 which appellant has not argued separately apart from claim 1 (see In re Young, 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991); In re Wood, 582 F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978)).

With respect to claim 4, the only limitation argued by appellant to be lacking appears to be "a circuit adapted to respond [to a change in⁶] temperature of said leaked fluid when said change occurs at a rate indicative of contact with leaked liquid whose temperature approaches that of a human body." While the Ketchum patent does not disclose the use of a rate of change detector, claim 4 before us on appeal does not require a rate of change detector. It is apparent from the disclosure of Ketchum that the

⁵ Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). In other words, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. Scripps Clinic & Research Found. v. Genentech Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991). It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or fully met by the reference. Kalman v. Kimberly Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

⁶ Although the clean copy of claim 4 (page 3 of Paper No. 8) as amended and entered reads, in the last paragraph, "a circuit adapted to respond to change a temperature ...," it is apparent from the version of amended claim 4 with markings to show changes made (page 9 of Paper No. 8) that appellant intended to retain the language "a circuit adapted to respond to a change in temperature." Accordingly, for purposes of this appeal, we have interpreted claim 4 as appellant clearly intended it to read. In the event of further prosecution of this application, however, action should be taken by either the examiner or appellant to formally correct this inconsistency.

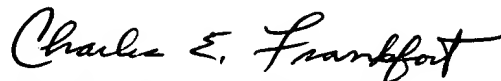
circuit 37 and indicators 40 respond to a temperature change when such change occurs at a rate indicative of contact with leaked liquid whose temperature approaches that of a human body, thereby meeting the language of the claim, notwithstanding that Ketchum is not concerned with and does not measure the rate of temperature change. We thus sustain the rejection of claim 4.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-4 under 35 U.S.C. § 102(b) is affirmed.

No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR § 1.136(a).

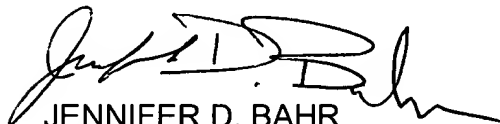
AFFIRMED



CHARLES E. FRANKFORT
Administrative Patent Judge



JEFFREY V. NASE
Administrative Patent Judge



JENNIFER D. BAHR
Administrative Patent Judge

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